

VIA: _____
(SPECIFY AIR OR SEA POUCH)

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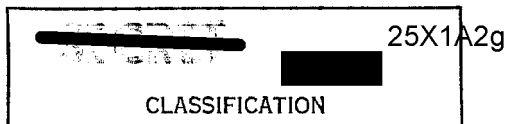
DISPATCH NO. [REDACTED]

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156.0045

72-89

OGC Has Reviewed



TO : Chief, EE
ATTN: General Counsel
FROM : Chief of Station, [REDACTED]

DATE: 29 DEC 1955

SUBJECT: GENERAL— Administrative/Legal

SPECIFIC— Reclaim for Per Diem of [REDACTED] 25X1A9a

1. The Chief of Administration, FCB has forwarded the attached reclaim to us for opinion. We have advised him orally that, although our initial opinion is that the reclaim should be allowed, we are without sufficient research material to support this opinion. We are limited to the Comptroller General's decisions which are only partially indexed and do not have the Court of Claims' decisions available which may or may not have overruled the Comptroller General's decisions.

2. The facts of the case commenced with [REDACTED] 1958, a copy of which is attached to the reclaim. In that correspondence Headquarters advised the subject that the period during which she would be necessarily in Headquarters for training, or processing, she would "be carried on a duty status with per diem." Pursuant to this dispatch, the Mission issued travel orders [REDACTED] 034/551 which the undersigned has examined in the subject's personnel file and verified that her orders provided "per diem is authorized during temporary duty." Subject departed [REDACTED] 6 December 1954, arrived at home leave point 18 December 1954, departed home leave point 31 January 1955, and arrived Headquarters for training, duties and processing the same date. Subject returned to [REDACTED] 23 March 1955. During time that subject was in Headquarters both she and her husband were staff employees. After her arrival in Washington she was orally advised that pursuant to Headquarters' regulation effective 31 December 1954, she was no longer entitled to per diem. We are not aware of the exact date of the Headquarters regulation in this regard or the form in which it was stated. The only official action indicating a change of policy in this line in the [REDACTED] Mission was a [REDACTED] Mission Memorandum issued 27 April 1955 and the pertinent portion of that memorandum is set forth in the Administrative Audit Difference Statement attached to the reclaim.

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3. Since it had been the practice in the [REDACTED] Mission to pay per diem, even though the staff employee was the wife of another staff employee prior to this time, we are inclined to feel that the cut-off, based upon the [REDACTED] Mission Memorandum was cut off at too early a date. We have based that opinion upon the Comptroller General's Decisions B-40616, 23 CGD 713-717. Although the facts are not directly similar, they appear to be sufficiently analogous to render that principle applicable to the present state of facts. The Comptroller

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Page 2

General apparently based his decision upon *Katzer v United States* 52 C Cls 12. There the question was, whether an officer proceeding under travel orders authorizing reimbursement on a mileage basis was subject to having his orders changed to a per diem basis after the travel had commenced. The Comptroller General said the following regarding travel orders:

"Such proposed action does not appear to take into consideration the vested rights of the traveler which accrued during the period of his travel status under orders authorizing reimbursement on a mileage basis, prior to the proposed change to a per diem basis, to be effected by a modification of his orders. Under travel orders entitling an officer to mileage, a legal right to such mileage accrues to and vests in the officer as and when travel is performed under the orders and such legal right may not be divested or modified by subsequent administrative action. *** The same principle applies to other forms of travel allowances and, therefore, except to correct or to complete the orders to show the original intent, travel orders may not be revoked or modified retroactively so as to increase or decrease the rights which have accrued and become fixed under the applicable statutes, regulations and orders for travel already performed."

4. Based upon this decision we are inclined to furnish an opinion authorizing the allowance of the reclaim. We would appreciate your conducting further research and advising us whether the application of the quoted decision is in keeping with current decisions and the General Counsel's policy. We would appreciate your returning the copy of the travel voucher and the Administrative Audit Difference Statement along with your opinion.

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6 Enclosures
(6 pages)

Distribution:
3 - IE (w/encls)

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ORIGINAL DOCUMENT MISSING PAGE(S):

no att.